REMARKS

This is a full and timely response to the outstanding Advisory Action mailed on August 25, 2008 (Paper No. 20080817) and the final Office Action mailed on May 9, 2008 (Paper No. 20080506). Upon entry of this response, claims 1-16, 20-25, 27-65, 69-97, and 112-115 are pending in the application. In this response, claims 1, 16, 22, 49, 65, and 86-90 have been amended. Claims 16, 22, 65, and 86-90 have been amended to correct for typographical errors or improper dependencies. Claims 68 and 105-111 have been canceled without prejudice, waiver, or disclaimer and claims 112-115 have been added. Applicant respectfully requests that the amendments being filed herewith be entered and request reconsideration and allowance of all pending claims.

I. Election/Restrictions

Applicant has canceled withdrawn claims 105-111 pursuant to the instructions expressed on page 2 of the final Office Action. Applicant reserves the right to present these canceled claims, or variants thereof, in continuing applications to be filed subsequently.

II. Claim Rejections under 35 U.S.C. §102(e)

Claims 1-16, 20-24, 27-45, 49-65, 68-73 and 75-94 have been rejected under 35 U.S.C. § 102(e) as allegedly anticipated by *Ukai et al.* (U.S. Pat. No. 7,096,486, hereafter "*Ukai*"). Applicant respectfully traverses this rejection.

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(e). In the present case, not every claimed feature is represented in the *Ukai* reference. Applicant discusses the *Ukai* reference and Applicant's claims in the following.

A. Independent Claim 1

Applicant's amended claim 1 provides as follows (emphasis added):

> 1. A method for providing television functionality comprising:
> tracking a plurality of viewing parameters corresponding to services that are provided to a user;
> determining a user preference for each of the plurality of viewing parameters;
> tracking the user preference by assigning a score to each of the plurality of viewing parameters;
> ***weighting the scores***;
> ***determining an overall user preference score for the plurality of tracked viewing parameters based on a linear combination of weighted scores associated with each of the plurality of tracked viewing parameters for the user***;
> receiving user input requesting television functionality; and
> providing the user with a result that is responsive to the user input and to the overall user preference score.

Applicant respectfully submits that independent claim 1 is allowable for at least the reason that *Ukai* does not disclose, teach, or suggest at least the features recited and emphasized above in amended claim 1.

The Advisory Action on page 2 states that:

> The examiner is interpreting the limitation "viewing parameters" as the total view time period 404 in Figure 4, wherein the view time period represents how interested the user [is] in the television program based on how long the user watches the television program. ... as clearly stated in the Office Action on Page 3, viewing parameters are being interpreted as the view time period 404 in Figure 4. Therefore, Ukai clearly teaches determining a user preference **(view time period 404 in Figure 4)** for each of the plurality of viewing parameters **(each program name in Figure 4)**.

(Emphasis in original). As such, the Advisory Action appears to contradict itself. The Advisory Action appears to allege that view time period 404 corresponds to both "viewing parameters" and "a user preference". Additionally, the Advisory Action appears to allege that "viewing parameters" corresponds to both view time period 404 and each program name in Figure 4.

In addition, the final Office Action on pages 3-4 states:

> Ukai also discloses tracking the user preference by assigning a score to each of the plurality of viewing parameters (**see Figure 5 and Column**

> **5, Lines 40-55 for assigning a view score to each program's user preferences being tracked**).
>
> Ukai also discloses determining an overall user preference score for the plurality of tracked viewing parameters based on a weighted linear combination of scores associated with each of the plurality of tracked viewing parameters for the user (**see Figure 6 and Column 5, Line 56 through Column 6, Line 20 for determining an overall user preference by calculating a specific view score, which is calculated by dividing the total view score by the number of programs viewed, where the number of program viewed represents that the overall user preference score (time viewed watching a television program) is calculated based on a weighted linear combination of scores associated with each of the plurality of tracked viewing parameters**)). ***The examiner further notes that the total number of programs represents a weighted linear combination because if one user [watches] a program 19 times and a second user watches a program 10 times, this represents a different weight in regards to the interest the user has in the program.***

(Emphasis in original). As such, the final Office Action appears to allege that a view score corresponds to "a score" and a specific view score corresponds to "an overall user preference score".

Under the above cited analysis in the Advisory Action and final Office Action, each limitation of Applicant's claim is being considered independent of the other limitations. Such an approach is improper given that it treats Applicant's claims in a piecemeal fashion such that each limitation is evaluated in a vacuum. As is well established in the law, the claims must be considered as a whole. *Hartness International, Inc. v. Simplimatic Engineering Co.*, 819 F.2d 1100, 2 USPQ2d 1826 (Fed. Cir. 1987) (In determining obviousness, "the inquiry is not whether each element existed in the prior art, but whether the prior art made obvious the invention as a whole for which patentability is claimed"). When Applicant's claims are considered as a whole, it becomes clear that *Ukai* does not teach what the Office Actions allege.

Assuming, *arguendo*, that a view time period 404 of FIG. 4 corresponds to a "viewing parameter", Applicant respectfully submits that *Ukai* does not disclose or suggest "determining a user preference for each of the plurality of" the view time periods 404. Specifically, *Ukai* teaches "a measured view time period is entered in the section for view time period of the view

monitoring table 400, and a view score obtained by dividing a view time period by a program time period is entered in the view history table 500" (col. 7, lines 45-49). Even assuming, *arguendo*, that measured view time corresponds to "a user preference", *Ukai* does not disclose or suggest that the measured view time is a user preference.

Further, even assuming, *arguendo*, that measured view time does correspond to "a user preference" and a view score corresponds to "a score" of claim 1, *Ukai* does not teach or suggest either "weighting the scores" or "determining an overall user preference score for the plurality of tracked viewing parameters based on a linear combination of weighted scores associated with each of the plurality of tracked viewing parameters for the user" as recited in amended claim 1.

While *Ukai* teaches that a "program view measure 504 [is] obtained by dividing the sum of view scores by the number of serials of the series programs, i.e., mean view score" (col. 5, lines 44-47), *Ukai* does not disclose or suggest that the view scores are weighted. Thus, Applicant respectfully submits that *Ukai* does not teach or suggest "weighting the scores" as recited in amended claim 1.

Furthermore, Applicant respectfully submits that a mean view score is not the same as "a linear combination of weighted scores" as recited in amended claim 1. Even assuming, *arguendo*, that a program is viewed multiple times as alleged in the final Office Action, *Ukai* discloses that this is accounted for by the view score (*see* col. 5, lines 49-55). Thus, Applicant respectfully submits that *Ukai* does not teach or suggest that the view score are weighted before summing, but rather that the view scores may have a value that is greater than 1.0.

Alternatively assuming, *arguendo*, that a specific view score corresponds to "an overall user preference score" does not overcome these deficiencies. Rather, *Ukai* teaches that a "specific view score (=(total view score)/(number of programs))" (col. 5, lines 60-61). *Ukai* does not teach or suggest that the total view score is determined from weighted view scores. Thus, *Ukai* appears to disclose determining an average view score for all of the programs included in

the total view score. As such, Applicant submits that dividing the total view score by the number of programs is not the same as "a linear combination of weighted scores" as recited in amended claim 1.

In addition, the final Office Action alleges on page 4 that "the total number of programs represents a weighted linear combination". Applicant respectfully disagrees. Applicant respectfully submits that one skilled in the art would understand that the total number of programs as presented in the *Ukai* reference is simply the number of programs corresponding to the view elements that have been totaled. Furthermore, *Ukai* does not even mention that the total number of programs is weighted. Moreover, Applicant respectfully submits that the values of the view time periods are not used to determine the total number of programs.

Even assuming, *arguendo*, that the view time period 404 corresponds to a "a user preference" and a program name of FIG. 4 corresponds to a "viewing parameter", *Ukai* does not teach or suggest either "weighting the scores" or "determining an overall user preference score for the plurality of tracked viewing parameters based on a linear combination of weighted scores associated with each of the plurality of tracked viewing parameters for the user" as recited in amended claim 1.

For at least the reasons described above, *Ukai* fails to disclose, teach or suggest all of the features recited in amended claim 1. Therefore, Applicant respectfully requests that the rejection of claim 1 be withdrawn.

B. Dependent Claims 2-16, 20-24, and 27-45

Since independent claim 1 is allowable, Applicant respectfully submits that claims 2-16, 20-24, and 27-45 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir.1988). Therefore, Applicant respectfully requests that the rejection of claims 2-16, 20-24, and 27-45 be withdrawn.

C. Dependent Claims 3 and 4

Notwithstanding, and in addition to, the arguments discussed above, Applicant respectfully requests that the rejection of claims 3 and 4 be withdrawn for at least the reason that *Ukai* fails to disclose, teach, or suggest at least the features recited and emphasized below in claims 3 and 4. Specifically, Applicant's claims 3 and 4 provide as follows (emphasis added):

> 3. The method of claim 1, where ***the user preference is determined based on a frequency that a service characterized by one or more of the plurality of viewing parameters is presented to the user.***
>
> 4. The method of claim 1, where ***the user preference is determined based on*** a duration and ***a frequency that a service characterized by one or more of the plurality of viewing parameters is presented to the user.***

The final Office Action alleges on pages 4-5 that "Ukai discloses that the user preference is determined based on a frequency that a service characterized by one or more of the plurality of viewing parameters is presented to the user (**see Figure 6 for determining a user preference 604 based on a number of programs 603 viewed**)" (emphasis in original). Applicant respectfully submits that "a frequency that a service ... is presented to the user" is not the same as a number of programs viewed. Additionally, Applicant submits that *Ukai* does not teach or suggest that either specific view score 604 or number of programs 603 is determined based on "a frequency that a service ... is presented to the user" as recited in claims 3 and 4.

Further, the Advisory Action on page 2 states that "Ukai clearly teaches determining a user preference **(view time period 404 in Figure 4)** for each of the plurality of viewing parameters **(each program name in Figure 4)**" (emphasis in original). As such, the Advisory Action appears to allege that view time period 404 corresponds to "a user preference". Applicant respectfully submits that *Ukai* does not teach or suggest that view time period 404 is determined based on "a frequency that a service ... is presented to the user" as recited in claims 3 and 4.

For at least the reasons described above, *Ukai* fails to disclose, teach or suggest all of the features recited in claims 3 and 4. Therefore, Applicant respectfully requests that the rejections of claims 3 and 4 be withdrawn.

D. Dependent Claim 6

Notwithstanding, and in addition to, the arguments discussed above, Applicant respectfully requests that the rejection of claim 6 be withdrawn for at least the reason that *Ukai* fails to disclose, teach, or suggest at least the features recited and emphasized below in claim 6. Specifically, Applicant's claim 6 provides as follows (emphasis added):

> 6. The method of claim 1, where ***the user preference conflicts with another user preference***.

The final Office Action alleges on page 5 that "Ukai discloses that the user preference conflicts with another user preference (**see Figure 3 and note that the two programs in table 300 are show at tow overlapping/conflicting time periods in table entries 303**)" (emphasis in original). However, the Advisory Action on page 2 states that "Ukai clearly teaches determining a user preference **(view time period 404 in Figure 4)** for each of the plurality of viewing parameters **(each program name in Figure 4)**" (emphasis in original). As such, the Advisory Action appears to allege that view time period 404 corresponds to "a user preference". Applicant respectfully submits that *Ukai* does not teach or suggest that a view time period 404 "conflicts with another" view time period 404. One skilled in the art would understand that the time a user views a first program does not conflict with the time the user views a second program.

For at least the reasons described above, *Ukai* fails to disclose, teach or suggest all of the features recited in claim 6. Therefore, Applicant respectfully requests that the rejection of claim 6 be withdrawn.

E. Dependent Claims 10-12

The final Office Action on page 6 alleges that "Referring to claims 10-12, see the rejection of claim 9. Applicant respectfully submits that this vague rejection of Applicant's claim limitations is improper. In particular, the MPEP points out in § 707.07(d) under "Improperly Expressed Rejections" that:

> A plurality of claims should never be grouped together in a common rejection, unless that rejection is equally applicable to all claims in the group.

Applicant submits that the rejection of claim 9 is not equally applicable to claims 10-12 because each claim contains different features. Specifically, Applicant's claims 10-12 provide as follows (emphasis added):

> 10. The method of claim 9, where ***the preference adaptive mode is activated via a switch located on a remote control device***.
>
> 11. The method of claim 1, where ***user preference is determined based on user input***.
>
> 12. The method of claim 11, where ***the user input indicates a preference for a viewing parameter***.

Applicant respectfully submits that the features recited and emphasized above in claims 10-12 are not included in claim 9. As such, the final Office Action fails to present a *prima facie* case of obviousness against claims 10-12 for at least the reason that it fails to articulate a finding that the cited references include each element claimed. Accordingly, Applicant respectfully requests that the rejection of claims 10-12 be withdrawn.

F. Dependent Claims 13 and 14

Notwithstanding, and in addition to, the arguments discussed above, Applicant respectfully requests that the rejection of claims 13 and 14 be withdrawn for at least the reason that *Ukai* fails to disclose, teach, or suggest at least the features recited and emphasized below in claims 13 and 14. Specifically, Applicant's claims 13 and 14 provide as follows (emphasis added):

> 13. The method of claim 11, where ***the user input indicates a preference against one or more of the plurality of viewing parameters***.
>
> 14. The method of claim 11, where ***the user input indicates*** a preference for a first viewing parameter and ***a preference against a second viewing parameter***, said first and second viewing parameters comprise the plurality of viewing parameters.

The final Office Action alleges on page 6 that "Ukai discloses that the user input indicates a preference against one or more of the plurality of viewing parameters (**see Figure 5 for the user viewing a program for a first time and second time, thereby showing entering a first time against a second time**)" (emphasis in original). However, the Advisory Action on page 2 states that "the view time period represents how interested the user [is] in the television program based on how long the user watches the television program." Thus, Applicant respectfully submits that "viewing a program" is not the same as "indicat[ing] a preference against one or more ... viewing parameters". Further, Applicant respectfully submits that *Ukai* does not teach or suggest "indicat[ing] a preference against one or more ... viewing parameters".

For at least the reasons described above, *Ukai* fails to disclose, teach or suggest all of the features recited in claims 13 and 14. Therefore, Applicant respectfully requests that the rejections of claims 13 and 14 be withdrawn.

G. Dependent Claim 21

Notwithstanding, and in addition to, the arguments discussed above, Applicant respectfully requests that the rejection of claim 21 be withdrawn for at least the reason that *Ukai* fails to disclose, teach, or suggest at least the features recited and emphasized below in claim 21. Specifically, Applicant's claim 21 provides as follows (emphasis added):

> 21. The method of claim 1, where ***the overall user preference score for the plurality of tracked viewing parameters is revised using statistical analysis***.

The final Office Action alleges on page 5 that "Ukai discloses that the overall user preference score for the plurality of tracked viewing parameters ... is revised using statistical

analysis ... (**see Figure 5 and Column 5, Lines 40-45**)" (emphasis in original). However, the final Office Action on page 3 alleges "determining an overall user preference by calculating a specific view score". As such, the final Office Action appears to allege that a specific view score corresponds to "an overall user preference score". Specifically, *Ukai* teaches that the "specific view score (=(total view score)/(number of programs))" (col. 5, lines 60-61). Applicant respectfully submits that *Ukai* does not disclose or suggest that the specific view score "is revised using statistical analysis".

The Advisory Action further alleges on page 3 that "Ukai clearly teaches performing statistical analysis on multiple program view scores in order to determine a mean view score (**see Figure 5 and Column 5, 40-55**). The examiner notes that a mean score is a classic calculation used in the art of statistics (**see http://www.statistics.com/resources/glossary/m/meanscore.php**)" (emphasis in original). Applicant respectfully disagrees. As noted above, while *Ukai* teaches calculating the specific view score by dividing total view score by number of programs, *Ukai* does not disclose or suggest that the specific view score "is revised using statistical analysis". Thus, Applicant respectfully submits that *Ukai* does not teach or suggest that "the overall user preference score for the plurality of tracked viewing parameters is revised using statistical analysis" as alleged.

For at least the reasons described above, *Ukai* fails to disclose, teach or suggest all of the features recited in claim 21. Therefore, Applicant respectfully requests that the rejection of claim 21 be withdrawn.

H. Dependent Claim 22

Notwithstanding, and in addition to, the arguments discussed above, Applicant respectfully requests that the rejection of claim 22 be withdrawn for at least the reason that *Ukai* fails to disclose, teach, or suggest at least the features recited and emphasized below in claim 22. Specifically, Applicant's claim 22 provides as follows (emphasis added):

22. The method of claim 17, where ***the overall user preference score for the plurality of tracked viewing parameters is determined using an artificial intelligence technology***.

The final Office Action alleges on page 5 that "Ukai discloses that the overall user preference score for the plurality of tracked viewing parameters ... is ... determined using an artificial intelligence technology (**see Figure 5 and Column 5, Lines 40-45**)" (emphasis in original). However, the final Office Action on page 3 alleges "determining an overall user preference by calculating a specific view score". As such, the final Office Action appears to allege that a specific view score corresponds to "an overall user preference score". Specifically, *Ukai* teaches that the "specific view score (=(total view score)/(number of programs))" (col. 5, lines 60-61). Applicant respectfully submits that *Ukai* does not disclose or suggest that the specific view score "is determined using an artificial intelligence technology".

The Advisory Action further alleges on page 3 that "Ukai clearly teaches the use of artificial intelligence by the calculations performed in Figures 5-7 and 12-16 for the TV receiving device automatically deciding a user's favorite programs based on the view scores recorded by the system. The examiner notes that by automatically making decisions for the user in regards to his/her preferred programming, Ukai clearly teaches the use of artificial intelligence (**see http://www.merriam-webster.com/dictionary/artificial+intelligence**)" (emphasis in original). Applicant respectfully disagrees. Calculation of values is not the same as artificial intelligence. As noted above, while *Ukai* teaches calculating the specific view score by dividing total view score by number of programs, *Ukai* does not disclose or suggest that the specific view score "is determined using an artificial intelligence technology". Thus, Applicant respectfully submits that *Ukai* does not teach or suggest "the overall user preference score for the plurality of tracked viewing parameters is determined using an artificial intelligence technology" as alleged.

For at least the reasons described above, *Ukai* fails to disclose, teach or suggest all of the features recited in claim 22. Therefore, Applicant respectfully requests that the rejection of claim 22 be withdrawn.

I. Independent Claim 49

Applicant's amended claim 49 provides as follows (emphasis added):

49. A system for providing television functionality comprising:
logic for tracking a plurality of viewing parameters corresponding to services that are provided to a user;
logic for determining a user preference for each of the plurality of viewing parameters;
logic for tracking the user preference by assigning a score to each of the plurality of viewing parameters;
logic for weighting the scores;
logic for determining an overall user preference score for the plurality of tracked viewing parameters based on a linear combination of weighted scores associated with each of the plurality of tracked viewing parameters for the user;
logic for receiving user input requesting television functionality; and
logic for providing the user with a result that is responsive to the user input and to the overall user preference score.

Applicant respectfully submits that independent claim 49 is allowable for at least the reason that *Ukai* does not disclose, teach, or suggest at least the features recited and emphasized above in amended claim 49.

The final Office Action on page 7 states "Referring to claims 49-65, 68-73 and 75-94, see the rejection of claims 1-16, 20-24 and 27-45, respectively." As discussed in section I.A above, the Advisory Action appears to contradict itself. The Advisory Action appears to allege that view time period 404 corresponds to both "viewing parameters" and "a user preference". Additionally, the Advisory Action appears to allege that "viewing parameters" corresponds to both view time period 404 and each program name in Figure 4. In addition, the final Office Action appears to allege that a view score corresponds to "a score" and a specific view score corresponds to "an overall user preference score".

Under the above cited analysis in the Advisory Action and final Office Action, each limitation of Applicant's claim is being considered independent of the other limitations. Such an approach is improper given that it treats Applicant's claims in a piecemeal fashion such that each limitation is evaluated in a vacuum. As is well established in the law, the claims must be considered as a whole. *Hartness International, Inc. v. Simplimatic Engineering Co.*, 819 F.2d 1100, 2 USPQ2d

1826 (Fed. Cir. 1987) (In determining obviousness, "the inquiry is not whether each element existed in the prior art, but whether the prior art made obvious the invention as a whole for which patentability is claimed"). When Applicant's claims are considered as a whole, it becomes clear that *Ukai* does not teach what the Office Actions allege.

Assuming, *arguendo*, that a view time period 404 of FIG. 4 corresponds to a "viewing parameter", Applicant respectfully submits that *Ukai* does not disclose or suggest "determining a user preference for each of the plurality of" the view time periods 404. Specifically, *Ukai* teaches "a measured view time period is entered in the section for view time period of the view monitoring table 400, and a view score obtained by dividing a view time period by a program time period is entered in the view history table 500" (col. 7, lines 45-49). Even assuming, *arguendo*, that measured view time corresponds to "a user preference", *Ukai* does not disclose or suggest that the measured view time is a user preference.

Further, even assuming, *arguendo*, that measured view time does correspond to "a user preference" and a view score corresponds to "a score" of claim 49, *Ukai* does not teach or suggest either "logic for weighting the scores" or "logic for determining an overall user preference score for the plurality of tracked viewing parameters based on a linear combination of weighted scores associated with each of the plurality of tracked viewing parameters for the user" as recited in amended claim 49.

While *Ukai* teaches that a "program view measure 504 [is] obtained by dividing the sum of view scores by the number of serials of the series programs, i.e., mean view score" (col. 5, lines 44-47), *Ukai* does not disclose or suggest that the view scores are weighted. Thus, Applicant respectfully submits that *Ukai* does not teach or suggest "weighting the scores" as recited in amended claim 49.

Furthermore, Applicant respectfully submits that a mean view score is not the same as "a linear combination of weighted scores" as recited in amended claim 49. Even assuming, *arguendo*, that a program is viewed multiple times as alleged in the final Office Action, *Ukai*

discloses that this is accounted for by the view score (*see* col. 5, lines 49-55). Thus, Applicant respectfully submits that *Ukai* does not teach or suggest that the view score are weighted before summing, but rather that the view scores may have a value that is greater than 1.0.

Alternatively assuming, *arguendo*, that a specific view score corresponds to "an overall user preference score" does not overcome these deficiencies. Rather, *Ukai* teaches that a "specific view score (=(total view score)/(number of programs))" (col. 5, lines 60-61). *Ukai* does not teach or suggest that the total view score is determined from weighted view scores. Thus, *Ukai* appears to disclose determining an average view score for all of the programs included in the total view score. As such, Applicant submits that dividing the total view score by the number of programs is not the same as "a linear combination of weighted scores" as recited in amended claim 49.

In addition, the final Office Action alleges on page 4 that "the total number of programs represents a weighted linear combination". Applicant respectfully disagrees. Applicant respectfully submits that one skilled in the art would understand that the total number of programs as presented in the *Ukai* reference is simply the number of programs corresponding to the view elements that have been totaled. Furthermore, *Ukai* does not even mention that the total number of programs is weighted. Moreover, Applicant respectfully submits that the values of the view time periods are not used to determine the total number of programs.

Even assuming, *arguendo*, that the view time period 404 corresponds to a "a user preference" and a program name of FIG. 4 corresponds to a "viewing parameter", *Ukai* does not teach or suggest either "weighting the scores" or "determining an overall user preference score for the plurality of tracked viewing parameters based on a linear combination of weighted scores associated with each of the plurality of tracked viewing parameters for the user" as recited in amended claim 49.

For at least the reasons described above, *Ukai* fails to disclose, teach or suggest all of the features recited in amended claim 49. Therefore, Applicant respectfully requests that the rejection of claim 49 be withdrawn.

J. Dependent Claims 50-65, 68-73 and 75-94

Since independent claim 49 is allowable, Applicant respectfully submits that claims 50-65, 68-73 and 75-94 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir.1988). Therefore, Applicant respectfully requests that the rejection of claims 50-65, 68-73 and 75-94 be withdrawn.

K. Dependent Claims 51 and 52

Notwithstanding, and in addition to, the arguments discussed above, Applicant respectfully requests that the rejection of claims 51 and 52 be withdrawn for at least the reason that *Ukai* fails to disclose, teach, or suggest at least the features recited and emphasized below in claims 51 and 52. Specifically, Applicant's claims 51 and 52 provide as follows (emphasis added):

> 51. The system of claim 49, where ***the user preference is determined based on a frequency that a service characterized by one or more of the plurality of viewing parameters is presented to the user***.
>
> 52. The system of claim 49, where ***the user preference is determined based on*** a duration and ***a frequency that a service characterized by one or more of the plurality of viewing parameters is presented to the user***.

The final Office Action alleges on pages 4-5 that "Ukai discloses that the user preference is determined based on a frequency that a service characterized by one or more of the plurality of viewing parameters is presented to the user (**see Figure 6 for determining a user preference 604 based on a number of programs 603 viewed**)" (emphasis in original). Applicant respectfully submits that "a frequency that a service ... is presented to the user" is not the same as a number of programs viewed. Additionally, Applicant submits that *Ukai* does not teach or suggest that either specific view score 604 or number of programs 603 is determined based on "a frequency that a service ... is presented to the user" as recited in claims 51 and 52.

Further, the Advisory Action on page 2 states that "Ukai clearly teaches determining a user preference **(view time period 404 in Figure 4)** for each of the plurality of viewing parameters **(each program name in Figure 4)**" (emphasis in original). As such, the Advisory Action appears to allege that view time period 404 corresponds to "a user preference". Applicant respectfully submits that *Ukai* does not teach or suggest that view time period 404 is determined based on "a frequency that a service ... is presented to the user" as recited in claims 51 and 52.

For at least the reasons described above, *Ukai* fails to disclose, teach or suggest all of the features recited in claims 51 and 52. Therefore, Applicant respectfully requests that the rejections of claims 51 and 52 be withdrawn.

L. Dependent Claim 55

Notwithstanding, and in addition to, the arguments discussed above, Applicant respectfully requests that the rejection of claim 55 be withdrawn for at least the reason that *Ukai* fails to disclose, teach, or suggest at least the features recited and emphasized below in claim 55. Specifically, Applicant's claim 55 provides as follows (emphasis added):

> 55. The system of claim 49, where ***the user preference conflicts with another user preference***.

The final Office Action alleges on page 5 that "Ukai discloses that the user preference conflicts with another user preference (**see Figure 3 and note that the two programs in table 300 are show at tow overlapping/conflicting time periods in table entries 303**)" (emphasis in original). However, the Advisory Action on page 2 states that "Ukai clearly teaches determining a user preference **(view time period 404 in Figure 4)** for each of the plurality of viewing parameters **(each program name in Figure 4)**" (emphasis in original). As such, the Advisory Action appears to allege that view time period 404 corresponds to "a user preference". Applicant respectfully submits that *Ukai* does not teach or suggest that a view time period 404 "conflicts with another" view time period 404. One skilled in the art would understand that the

time a user views a first program does not conflict with the time the user views a second program.

For at least the reasons described above, *Ukai* fails to disclose, teach or suggest all of the features recited in claim 55. Therefore, Applicant respectfully requests that the rejection of claim 55 be withdrawn.

M. Dependent Claims 59-61

The final Office Action on page 7 states "Referring to claims 49-65, 68-73 and 75-94, see the rejection of claims 1-16, 20-24 and 27-45, respectively." Applicant respectfully submits that this vague rejection of Applicant's claim limitations is improper. To begin, a one-to-one correspondence does not exist between the claims as alleged. Moreover, the MPEP points out in § 707.07(d) under "Improperly Expressed Rejections" that:

> A plurality of claims should never be grouped together in a common rejection, unless that rejection is equally applicable to all claims in the group.

In particular, the final Office Action on page 6 alleges that "Referring to claims 10-12, see the rejection of claim 9. Applicant submits that the rejection of claim 9 is not equally applicable to claims 59-61 because each claim contains different features. Specifically, Applicant's claims 59-61 provide as follows (emphasis added):

> 59. The system of claim 58, where ***the preference adaptive mode is activated via a switch located on a remote control device.***
>
> 60. The system of claim 49, where ***user preference is determined based on user input.***
>
> 61. The system of claim 60, where ***the user input indicates a preference for one or more of the plurality of viewing parameters.***

Applicant respectfully submits that the features recited and emphasized above in claims 59-61 are not included in claim 9. As such, the final Office Action fails to present a *prima facie* case of obviousness against claims 59-61 for at least the reason that it fails to articulate a finding that

the cited references include each element claimed. Accordingly, Applicant respectfully requests that the rejection of claims 59-61 be withdrawn.

N. Dependent Claims 62 and 63

Notwithstanding, and in addition to, the arguments discussed above, Applicant respectfully requests that the rejection of claims 62 and 63 be withdrawn for at least the reason that *Ukai* fails to disclose, teach, or suggest at least the features recited and emphasized below in claims 62 and 63. Specifically, Applicant's claims 62 and 63 provide as follows (emphasis added):

> 62. The system of claim 60, where ***the user input indicates a preference against one or more of the plurality of viewing parameters***.
>
> 63. The system of claim 60, where ***the user input indicates*** a preference for a first viewing parameter and ***a preference against a second viewing parameter***, said first and second viewing- parameters comprise the plurality of viewing parameters.

The final Office Action alleges on page 6 that "Ukai discloses that the user input indicates a preference against one or more of the plurality of viewing parameters (**see Figure 5 for the user viewing a program for a first time and second time, thereby showing entering a first time against a second time**)" (emphasis in original). However, the Advisory Action on page 2 states that "the view time period represents how interested the user [is] in the television program based on how long the user watches the television program." Thus, Applicant respectfully submits that "viewing a program" is not the same as "indicat[ing] a preference against one or more ... viewing parameters". Further, Applicant respectfully submits that *Ukai* does not teach or suggest "indicat[ing] a preference against one or more ... viewing parameters".

For at least the reasons described above, *Ukai* fails to disclose, teach or suggest all of the features recited in claims 62 and 63. Therefore, Applicant respectfully requests that the rejections of claims 62 and 63 be withdrawn.

O. Dependent Claim 70

Notwithstanding, and in addition to, the arguments discussed above, Applicant respectfully requests that the rejection of claim 70 be withdrawn for at least the reason that *Ukai* fails to disclose, teach, or suggest at least the features recited and emphasized below in claim 70. Specifically, Applicant's claim 70 provides as follows (emphasis added):

> 70. The system of claim 49, where ***the overall user preference score for the plurality of tracked viewing parameters is revised using statistical analysis***.

The final Office Action alleges on page 5 that "Ukai discloses that the overall user preference score for the plurality of tracked viewing parameters ... is revised using statistical analysis ... (**see Figure 5 and Column 5, Lines 40-45**)" (emphasis in original). However, the final Office Action on page 3 alleges "determining an overall user preference by calculating a specific view score". As such, the final Office Action appears to allege that a specific view score corresponds to "an overall user preference score". Specifically, *Ukai* teaches that the "specific view score (=(total view score)/(number of programs))" (col. 5, lines 60-61). Applicant respectfully submits that *Ukai* does not disclose or suggest that the specific view score "is revised using statistical analysis" as recited in claim 70.

The Advisory Action further alleges on page 3 that "Ukai clearly teaches performing statistical analysis on multiple program view scores in order to determine a mean view score (**see Figure 5 and Column 5, 40-55**). The examiner notes that a mean score is a classic calculation used in the art of statistics (**see http://www.statistics.com/resources/glossary/m/meanscore.php**)" (emphasis in original). Applicant respectfully disagrees. As noted above, while *Ukai* teaches calculating the specific view score by dividing total view score by number of programs, *Ukai* does not disclose or suggest that the specific view score "is revised using statistical analysis". Thus, Applicant respectfully submits that *Ukai* does not teach or suggest that "the overall user preference score for the plurality of tracked viewing parameters is revised using statistical analysis" as alleged.

For at least the reasons described above, *Ukai* fails to disclose, teach or suggest all of the features recited in claim 70. Therefore, Applicant respectfully requests that the rejection of claim 70 be withdrawn.

P. Dependent Claim 71

Notwithstanding, and in addition to, the arguments discussed above, Applicant respectfully requests that the rejection of claim 71 be withdrawn for at least the reason that *Ukai* fails to disclose, teach, or suggest at least the features recited and emphasized below in claim 71. Specifically, Applicant's claim 71 provides as follows (emphasis added):

> 71. The system of claim 49, where ***the overall user preference score for the plurality of tracked viewing parameters is determined using an artificial intelligence technology***.

The final Office Action alleges on page 5 that "Ukai discloses that the overall user preference score for the plurality of tracked viewing parameters ... is ... determined using an artificial intelligence technology (**see Figure 5 and Column 5, Lines 40-45**)" (emphasis in original). However, the final Office Action on page 3 alleges "determining an overall user preference by calculating a specific view score". As such, the final Office Action appears to allege that a specific view score corresponds to "an overall user preference score". Specifically, *Ukai* teaches that the "specific view score (=(total view score)/(number of programs))" (col. 5, lines 60-61). Applicant respectfully submits that *Ukai* does not disclose or suggest that the specific view score "is determined using an artificial intelligence technology".

The Advisory Action further alleges on page 3 that "Ukai clearly teaches the use of artificial intelligence by the calculations performed in Figures 5-7 and 12-16 for the TV receiving device automatically deciding a user's favorite programs based on the view scores recorded by the system. The examiner notes that by automatically making decisions for the user in regards to his/her preferred programming, Ukai clearly teaches the use of artificial intelligence (**see**

http://www.merriam-webster.com/dictionary/artificial+intelligence)" (emphasis in original). Applicant respectfully disagrees. Calculation of values is not the same as artificial intelligence. As noted above, while *Ukai* teaches calculating the specific view score by dividing total view score by number of programs, *Ukai* does not disclose or suggest that the specific view score "is determined using an artificial intelligence technology". Thus, Applicant respectfully submits that *Ukai* does not teach or suggest "the overall user preference score for the plurality of tracked viewing parameters is determined using an artificial intelligence technology" as alleged.

For at least the reasons described above, *Ukai* fails to disclose, teach or suggest all of the features recited in claim 71. Therefore, Applicant respectfully requests that the rejection of claim 71 be withdrawn.

III. Claim Rejections under 35 U.S.C. §103(a)

Claims 25, 46-48, 74 and 95-97 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Ukai*. Applicant respectfully traverses this rejection as applied to pending claims 25, 46-48, 74 and 95-97.

The M.P.E.P. § 2100-116 states:

> Office policy is to follow *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), in the consideration and determination of obviousness under 35 U.S.C. 103. . . the four factual inquires enunciated therein as a background for determining obviousness are as follows:
>
> (A) Determining the scope and contents of the prior art;
> (B) Ascertaining the differences between the prior art and the claims in issue;
> (C) Resolving the level of ordinary skill in the pertinent art; and
> (D) Evaluating evidence of secondary considerations.

In the present case, it is respectfully submitted that a *prima facie* case for obviousness is not established using the art of record.

A. Dependent Claim 25

For the reasons discussed in section I.A above, *Ukai* does not teach or suggest either "weighting the scores" or "determining an overall user preference score for the plurality of

tracked viewing parameters based on a linear combination of weighted scores associated with each of the plurality of tracked viewing parameters for the user" as recited in amended claim 1. The addition of *Alexander et al.* (U.S. Pat. No. 6,177,931, hereafter "*Alexander*") does not overcome these deficiencies. While *Alexander* teaches that the "present invention is an improvement on the electronic program guide (EPG)" (col. 2, lines 64-65), *Alexander* does not disclose or suggest "tracking the user preference by assigning a score to each of the plurality of viewing parameters", much less either "weighting the scores" or "determining an overall user preference score for the plurality of tracked viewing parameters based on a linear combination of weighted scores associated with each of the plurality of tracked viewing parameters for the user" as recited in amended claim 1.

In addition, the Advisory Action states on page 4 that "the examiner has taken Official Notice to the fact that preference data can be stored at a headend. ... Alexander et al. (U.S. Patent No. 6,177,931) teaches that user preferences can be transmitted back to a headend for further analysis (**Column 29, Lines 12-36**)" (emphasis in original). Specifically, the cited section of *Alexander* teaches:

> 2. Analyzing and characterizing viewer profile information.
>
> The viewer profile information (data collected concerning, and surrounding, a viewer's interaction with the television, the EPG (including the recording and watching functions), the Internet, the World Wide Web, and any other sources of information external to the EPG, but through which the viewer interact)) can be sent to a computer at the head end of television distribution for analysis, or in the alternative, can be analyzed by the EPG.
>
> Information about the viewer is captured on an ongoing basis. Similarly, viewer profile data is updated on an ongoing basis. Accordingly, the viewer profile analysis program (the "Profile Program"), can be repeated at some time interval to incorporate additional information about the viewer that has been captured since the last analysis. Alternatively, the Profile Program is a real time program that processes each discrete item of information about a viewer as the data is captured.
>
> The viewer profile analysis program (the "Profile Program"), may be resident at the head end, in the Internet, included as part of the EPG, or

> distributed among these various possible locations. The Profile Program performs a variety of different types of analysis on the viewer profile data.

While *Alexander* teaches that "viewer profile information ... can be sent to a computer at the head end of television distribution for analysis" (col. 29, lines 14-20), the cited section does not disclose or suggest "data identifying the user preference is stored within a headend device" as recited in claim 25. As set forth in MPEP § 2144.03 and according to well-established Federal case law (emphasis added in first paragraph below):

> As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).
>
> It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.

Applicant respectfully submits that *Alexander*, as cited by the Advisory Action, fails to provide "instant and unquestionable demonstration as to defy dispute." Thus, "data identifying the user preference is stored within a headend device", as recited in claim 25, does not implicitly follow from the teachings of *Ukai* in light of the knowledge of those having ordinary skill in the art. Even assuming, *arguendo*, that *Alexander* teaches that preference data can be stored at a headend, Applicant respectfully submits that the teachings of a single reference does not make the feature well-known. Accordingly, Applicant respectfully requests that the assertions with regard to official notice be withdrawn.

Because independent claim 1 is allowable over *Ukai* in view of *Alexander*, Applicant respectfully submits that claim 25 is allowable for at least the reason that it depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claim 25 be withdrawn.

B. Dependent Claims 46-48

For the reasons discussed in section I.A above, *Ukai* does not teach or suggest either "weighting the scores" or "determining an overall user preference score for the plurality of tracked viewing parameters based on a linear combination of weighted scores associated with each of the plurality of tracked viewing parameters for the user" as recited in amended claim 1. The addition of *Block et al.* (U.S. Pat. No. 6,675,384, hereafter "*Block*") does not overcome these deficiencies. While *Block* teaches that the "present invention relates ... to a system and method for information labeling and control in which a user can control access to information based on its content" (col. 1, lines 6-9), *Block* does not disclose or suggest "tracking the user preference by assigning a score to each of the plurality of viewing parameters", much less either "weighting the scores" or "determining an overall user preference score for the plurality of tracked viewing parameters based on a linear combination of weighted scores associated with each of the plurality of tracked viewing parameters for the user" as recited in amended claim 1. Because independent claim 1 is allowable over *Ukai* in view of *Block*, Applicant respectfully submits that claims 46-48 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988).

Notwithstanding, and in addition to, the arguments discussed above, Applicant respectfully submits that a *prima facie* case of obviousness against claims 46-48 has not been presented. Specifically, MPEP § 2143.03 states:

> To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

In the present case, Applicant's claims 46-48 provide as follows (emphasis added):

> 46. The method of claim 45, where ***the result comprises not tuning to the user identified television service***.
>
> 47. The method of claim 46, where ***the result comprises prompting a user to provide additional input***.

> 48. The method of claim 47, where ***the additional input comprises a personal identification number (PIN)***.

While the final Office Action acknowledges on page 8 that "Ukai ... fails to teach a conditional access system that will not tune to a program selection unless a user enters his/her PIN/password", neither the final Office Action nor the Advisory Action even alleges that the features recited and emphasized above in claims 46-48 are disclosed or suggested by any of the cited references. Thus, for at least the reason that the Office Actions fail to articulate a finding that the cited references include each element claimed, Applicant respectfully requests that the rejection of claims 46-48 be withdrawn.

Further, the Advisory Action states on pages 4-5 that "the examiner has taken Official Notice to the fact that parental control programs commonly reside on television control devices. ... Block et al. (U.S. Patent No. 6,675,384) teaches a parental control program resident on a television receiver device (**see element 100 and 110 in Figure 1**)" (emphasis in original). Specifically, *Block* teaches:

> The viewer station equipment 20 may include a tuner 60 or program selector 70 for receiving the program signal, a demodulator 80 and/or decoder 90 for demodulating and decoding the received program signal, a viewing control unit 100 which allows a viewer to control access to the received program signal by generating various local labels, a label interpretation unit 110 which evaluates and compares the locally generated and transmitted labels, an access control unit 120 which controls access to the program signal, and a modulator 130 for modulating the access controlled program signal onto a suitable carrier frequency prior to transmission to the TV antenna input.

(Col. 3, line 62 through col. 4, line 7). Applicant respectfully submits that there is no mention or suggestion of "parental control program" in this section or elsewhere in *Block*. As set forth in MPEP § 2144.03 and according to well-established Federal case law (emphasis added in first paragraph below):

> As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

> It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.

Thus, Applicant respectfully submits that *Block*, as cited by the Advisory Action, fails to provide "instant and unquestionable demonstration as to defy dispute." Even assuming, *arguendo*, that *Block* teaches a parental control program, Applicant respectfully submits that the teachings of a single reference does not make the feature well-known. Accordingly, Applicant respectfully requests that the assertions with regard to official notice be withdrawn.

For at least the reasons described above, *Ukai* in view of *Block* fails to disclose, teach or suggest all of the features recited in claims 46-48. Therefore, Applicant respectfully requests that the rejections of claims 46-48 be withdrawn.

C. Dependent Claim 74

For the reasons discussed in section I.I above, *Ukai* does not teach or suggest either "logic for weighting the scores" or "logic for determining an overall user preference score for the plurality of tracked viewing parameters based on a linear combination of weighted scores associated with each of the plurality of tracked viewing parameters for the user" as recited in amended claim 49. The addition of *Alexander et al.* (U.S. Pat. No. 6,177,931, hereafter "*Alexander*") does not overcome these deficiencies. While *Alexander* teaches that the "present invention is an improvement on the electronic program guide (EPG)" (col. 2, lines 64-65), *Alexander* does not disclose or suggest "logic for tracking the user preference by assigning a score to each of the plurality of viewing parameters", much less either "logic for weighting the scores" or "logic for determining an overall user preference score for the plurality of tracked viewing parameters based on a linear combination of weighted scores associated with each of the plurality of tracked viewing parameters for the user" as recited in amended claim 49.

In addition, the Advisory Action states on page 4 that "the examiner has taken Official Notice to the fact that preference data can be stored at a headend. ... Alexander et al. (U.S.

Patent No. 6,177,931) teaches that user preferences can be transmitted back to a headend for further analysis (**Column 29, Lines 12-36**)" (emphasis in original). While *Alexander* teaches that "viewer profile information ... can be sent to a computer at the head end of television distribution for analysis" (col. 29, lines 14-20), the cited section does not disclose or suggest "data identifying the user preference is stored within a headend device" as recited in claim 74. Applicant respectfully submits that *Alexander*, as cited by the Advisory Action, fails to provide "instant and unquestionable demonstration as to defy dispute." Thus, "data identifying the user preference is stored within a headend device", as recited in claim 74, does not implicitly follow from the teachings of *Ukai* in light of the knowledge of those having ordinary skill in the art. Even assuming, *arguendo*, that *Alexander* teaches that preference data can be stored at a headend, Applicant respectfully submits that the teachings of a single reference does not make the feature well-known. Accordingly, Applicant respectfully requests that the assertions with regard to official notice be withdrawn.

Because independent claim 49 is allowable over *Ukai* in view of *Alexander*, Applicant respectfully submits that claim 74 is allowable for at least the reason that it depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claim 74 be withdrawn.

D. Dependent Claims 95-97

For the reasons discussed in section I.I above, *Ukai* does not teach or suggest either "logic for weighting the scores" or "logic for determining an overall user preference score for the plurality of tracked viewing parameters based on a linear combination of weighted scores associated with each of the plurality of tracked viewing parameters for the user" as recited in amended claim 49. The addition of *Block et al.* (U.S. Pat. No. 6,675,384, hereafter "*Block*") does not overcome these deficiencies. While *Block* teaches that the "present invention relates ... to a system and method for information labeling and control in which a user can control access to

information based on its content" (col. 1, lines 6-9), *Block* does not disclose or suggest "logic for tracking the user preference by assigning a score to each of the plurality of viewing parameters", much less either "logic for weighting the scores" or "logic for determining an overall user preference score for the plurality of tracked viewing parameters based on a linear combination of weighted scores associated with each of the plurality of tracked viewing parameters for the user" as recited in amended claim 49. Because independent claim 49 is allowable over *Ukai* in view of *Block*, Applicant respectfully submits that claims 95-97 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988).

Notwithstanding, and in addition to, the arguments discussed above, Applicant respectfully submits that a *prima facie* case of obviousness against claims 95-97 has not been presented. In the present case, Applicant's claims 95-97 provide as follows (emphasis added):

> 95. The system of claim 94, where ***the result comprises not tuning to the user identified television service***.
>
> 96. The system of claim 95, where ***the result comprises prompting a user to provide additional input***.
>
> 97. The system of claim 96, where ***the additional input comprises a personal identification number (PIN)***.

While the final Office Action acknowledges on page 8 that "Ukai ... fails to teach a conditional access system that will not tune to a program selection unless a user enters his/her PIN/password", neither the final Office Action nor the Advisory Action even alleges that the features recited and emphasized above in claims 95-97 are disclosed or suggested by any of the cited references. Thus, for at least the reason that the Office Actions fail to articulate a finding that the cited references include each element claimed, Applicant respectfully requests that the rejection of claims 95-97 be withdrawn.

Further, the Advisory Action states on pages 4-5 that "the examiner has taken Official Notice to the fact that parental control programs commonly reside on television control devices.

... Block et al. (U.S. Patent No. 6,675,384) teaches a parental control program resident on a television receiver device (**see element 100 and 110 in Figure 1**)" (emphasis in original). Applicant respectfully submits that there is no mention or suggestion of "parental control program" in *Block*. Thus, Applicant respectfully submits that *Block*, as cited by the Advisory Action, fails to provide "instant and unquestionable demonstration as to defy dispute." Even assuming, *arguendo*, that *Block* teaches a parental control program, Applicant respectfully submits that the teachings of a single reference does not make the feature well-known. Accordingly, Applicant respectfully requests that the assertions with regard to official notice be withdrawn.

For at least the reasons described above, *Ukai* in view of *Block* fails to disclose, teach or suggest all of the features recited in claims 95-97. Therefore, Applicant respectfully requests that the rejections of claims 95-97 be withdrawn.

IV. Newly Added Claims

New claims 112-115 are based on subject matter that is explicit and/or inherent within the description of the specification and/or the drawings. Applicant submits that no new matter has been added in the new claims 112-115, and that new claims 112-115 are allowable over the cited references. Furthermore, Applicant respectfully submits that claims 112-113 and 114-115, which depend either directly or indirectly from independent claims 1 and 49, respectively, are allowable for at least the reason that each depends from an allowable independent claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Therefore, Applicant requests the Examiner to enter and allow the above new claims.

CONCLUSION

Applicant respectfully requests that all outstanding objections and rejections be withdrawn and that this application and presently pending claims 1-16, 20-25, 27-65, 69-97, and 112-115 be allowed to issue. Any statements in the Advisory Action and final Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known since the final Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions. If the Examiner has any questions or comments regarding Applicant's response, the Examiner is encouraged to telephone Applicant's undersigned counsel.

Respectfully submitted,

By: 

Randy R. Schoen, Reg. No. 62,440

THOMAS, KAYDEN, HORSTEMEYER & RISLEY, L.L.P.
600 Galleria Parkway, SE
Suite 1500
Atlanta, Georgia 30339-5948
Tel: (770) 933-9500
Fax: (770) 951-0933